

## EXEMPT THEATER MOTION PICTURE PROJECTIONISTS FROM PROSECUTION UNDER D.C. OBSCENITY LAW

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DECEMBER 10, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. McMILLAN, from the Committee on the District of Columbia, submitted the following

### REPORT

[To accompany H.R. 2745]

The Committee on the District of Columbia, to whom was referred the bill (H.R. 2745), to amend the law relating to obscenity in the District of Columbia to exempt certain motion picture projectionists in theaters from prosecution under the law, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of H.R. 2745 is to amend the law relating to obscenity in the District of Columbia (81 Stat. 738; D.C. Code, sec. 22-2001(d)), so as to exempt motion picture projectionists in theaters in the District of Columbia, from prosecution under that Act for exhibiting motion pictures, when the projectionist has no financial interest either in the motion picture itself or in the theater in which it is exhibited.

#### NEED FOR LEGISLATION

This proposed legislation was requested on behalf of the professional motion picture projectionists in the District of Columbia by the Moving Picture Machine Operators' Union.

Your Committee is advised that by reason of the increase in the number and boldness of sex-type films being exhibited in the District of Columbia, the motion picture projectionists in the local theaters are being exposed to an ever-growing risk of arrest and prosecution for violation of the D.C. law relating to obscenity, which makes it a felony for a person knowingly to present an obscene motion picture or to exhibit to a minor a motion picture show which depicts nudity,

sexual conduct, or sado-masochistic abuse and which is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

Projectionists in other jurisdictions are being arrested and prosecuted for projecting allegedly obscene films. In 1969, for example, the manager and the projectionist of a theater in Brooklyn, New York, were arrested and charged with showing "Adults Only" films to youths. The manager had supervision of the box-office and the door, and thus was responsible for determining who was being admitted. But the projectionist was in the projection booth, completely out of view of the theater entrance, and thus had no way of knowing who was being admitted.

Also, in California there were two instances in which projectionists were arrested and charged under the state's obscenity laws, after the governor had signed a new law exempting them from such arrest and prosecution, but prior to the effective date thereof. Thus, in these instances the projectionists suffer the stigma of arrest, finger-printing, being photographed for criminal records, standing trial, and possibly being convicted, in addition to the character damage incident to the entire procedure.

As for the local situation, only last month two films being exhibited at a District of Columbia theater were seized by the police on the grounds that they depicted hard-core pornography. Altogether, your Committee is advised, there are about 30 cases now pending in the D.C. Court of General Sessions involving films, books, or photographs that allegedly violate the D.C. statute on obscenity. With film producers growing ever more bold in their filming of sex acts, not only natural but perverse and unnatural, it is inevitable that such arrests and prosecutions under this law must increase. And it appears not unlikely that some theater projectionists may become involved in these cases, as has already occurred in other jurisdictions.

#### PRECEDENT FOR LEGISLATION

Your Committee is informed that about one-half of the individual states have enacted legislation to protect salaried employees of theaters from prosecution under the obscenity laws, and that most of the remaining states have similar legislation pending. Thus, the bill H.R. 2745 represents legislative protection to those employees in the District of Columbia which already has found broad acceptance throughout the nation.

#### CONCLUSIONS

The salaried employees of theaters have no voice whatever in management, and certainly no veto over the selection of films exhibited. They are only mechanics, working for an hourly wage, and thus hardly deserve to be prosecuted for conditions beyond their control. In view of this fact, it is the opinion of your Committee that H.R. 2745 should be enacted into law, thus affording the professional motion picture projectionists in the District of Columbia the same reasonable protection which has been given them in many of the states.

It is the intent of this Committee, however, that the exemption from prosecution under the D.C. law on obscenity which this proposed

legislation will provide shall apply only to motion picture projectionists while engaged in their duties as employees of the theaters.

#### COMMISSIONER'S LETTER

The following is the letter from the Commissioner of the District of Columbia, expressing his approval of this proposed legislation:

THE DISTRICT OF COLUMBIA,  
Washington, D.C., August 1, 1969.

HON. JOHN L. McMILLAN,  
*Chairman, Committee on the District of Columbia,  
House of Representatives, Washington, D.C.*

DEAR MR. McMILLAN: The Government of the District of Columbia has for report H.R. 2745, 91st Congress, a bill "To amend the law relating to obscenity in the District of Columbia to exempt certain motion picture projectionists in theaters from prosecution under the law."

The purpose of the bill is to amend section 872 of the Act of March 3, 1901 (31 Stat. 1332), as amended (D.C. Code, sec. 22-2001), which, among other things, prohibits the presentation of an obscene motion picture or the exhibition to a minor of a motion picture depicting nudity, sexual conduct or sado-masochistic abuse, and which, taken as a whole, is patently offensive because it affronts prevailing standards in the adult community with respect to what is suitable material for minors. The proposed amendment would exempt from prosecution for the violation of this prohibition the projectionist who operates the motion picture projector, unless he has a financial interest in the motion picture or in the theater in which it is shown.

The District of Columbia Government is informed that generally motion picture projectionists have no financial interest in the motion pictures they project or in the theaters in which the pictures are shown, and that they are not usually in a position to determine or prescribe the films to be shown in the theater or control the persons to be admitted to see them. In any such case, where a projectionist does not have control over the management of the theater and does not establish its policy as to the pictures to be shown and the persons to be admitted, the District is of the view that such a projectionist should not be subject to the sanctions provided by section 872 of the Act approved March 3, 1901, *supra*, insofar as he may be involved in the showing of obscene motion pictures to minors in such theater.

Accordingly, the Government of the District of Columbia has no objection to the enactment of the bill.

The Government of the District of Columbia has been advised by the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report to the Congress.

Sincerely yours,

THOMAS W. FLETCHER,  
*Assistant of the Commissioner,*  
(For Walter E. Washington, Commissioner).

## CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

(81 Stat. 738)

"SEC. 872. OBSCENITY.—(a)(1) It shall be unlawful in the District of Columbia for a person knowingly—

"(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

"(B) to present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

"(C) to pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

"(D) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

"(E) to create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

"(F) to advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

"(G) to advertise or otherwise promote the sale of material represented or held out by such person to be obscene,

"(2)(A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than three copies, of obscene, indecent, or filthy material shall be *prima facie* evidence of an intent to disseminate such material in violation of this subsection.

"(B) For purposes of paragraph (1) of this subsection, the term 'knowingly' means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

"(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1), which were named in the charge against such person and which were found in the possession or under the control of such person at the time of his arrest.



"(b)(1) It shall be unlawful in the District of Columbia for any person knowingly—

"(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide, to a minor—

"(i) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

"(ii) any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

"(B) to exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

"(2) For purposes of paragraph (1) of this subsection:

"(A) The term 'minor' means any person under the age of seventeen years.

"(B) The term 'nudity' includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

"(C) The term 'sexual conduct' includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

"(D) The term 'sexual excitement' includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

"(E) The term 'sado-masochistic abuse' includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

"(F) The term 'knowingly' means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of—

"(i) the character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and

"(ii) the age of the minor.

“(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

“(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 while engaged in activities regulated pursuant to such Act. *No person shall be subject to prosecution under this section for operating a motion picture projector in a theater to present or exhibit a motion picture described in subsection (a)(1)(B) or subsection (b)(1)(B) unless such person has a financial interest in the motion picture or in the theater in which it is shown.*

“(e) A person convicted of violating subsection (a) or (b) of this section shall for the first offense be fined not more than \$3,000 or imprisoned not more than one year, or both. A person convicted of a second or subsequent offense under subsection (a) or (b) of this section shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned not less than six months or more than three years, or both.”





